IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4492 OF 2003

Mr.Sadhawani S.S.)
Adult, Indian Inhabitant,)
Occupation Nil, Residing at)
Gopi Niwas, Gandhi Nagar, Akola.) ...Petitioner

V/s.

1. The Enquiry Officer,)
MHADA, Grihnirman Bhavan,)
Bandra, Mumbai-400 050.)
)
2. The Disciplinary Authority,)
i.e. Vice President & C.E.O.)
MHADA Grihnirman Bhavan,)
Bandra(E), Mumbai-400 050.)
)
3. The Head of Office,)
MHADA, Grihnirman Bhavan,)
Bandra, MUmbai-400 050.)
)
4. The Appellate Authority,)
MHADA, Grihnirman Bhavan,)
Bandra, Mumbai-400 050.)
)
5. The State of Maharashtra.) ...Respondents

AND

WRIT PETITION NO. 4486 OF 2003

Mr.D.I. Mirkar,)
Age Adult, Occupation Nil)
Residing at 127/4493 Tilak Nagar,)
Chembur, Mumbai-400 071.) ...Petitioner

V/s.

1. The Enquiry Officer,)
MHADA, Grihnirman Bhavan,)
Bandra, Mumbai-400 050.)
)
2. The Disciplinary Authority,)
i.e. Vice President & C.E.O.)

MHADA Grihnirman Bhavan,)
Bandra(E), Mumbai-400 050.)
)
3. The Head of Office,)
MHADA, Grihnirman Bhavan,)
Bandra, MUmbai-400 050.)
)
4. The Appellate Authority,)
MHADA, Grihnirman Bhavan,)
Bandra, Mumbai-400 050.)
)
5. The State of Maharashtra.) ...Respondents

Shri Y.S. Jahagirdar, Sr.Advocate with I.M. Khairdi for Petitioner.

Shri S.R. Nargolkar, APP for Respondents No.1 to 5.

CORAM : V.G. PALSHIKAR, Acg.C.J.
AND
V.M. KANADE, J.

DATED : AUGUST 8, 2006

ORAL JUDGMENT (PER V.M. KANADE, J.) :-

. Both these petitions can be disposed of by a common judgment since the issue involved in these petitions is identical.

2. The short question which falls for consideration before this Court is whether the Government has the jurisdiction and the authority to issue directions to the appellate authority while exercising its jurisdiction under Section 164 of the Maharashtra Housing and Area Development Act (hereinafter referred

to as "MHADA Act".)

3. Brief facts which are relevant for the purpose of deciding these petitions are as under :-

4. Both the petitioners were working with MHADA. Petitioner Mr.S.S. Sadhawani was working as Executive Engineer and petitioner D.I. Mirkar was working as Deputy Engineer. During the year 1996 and before the petitioners took charge of their respective posts, officials from the Accounts Department committed various economic offences on the basis of bogus bills. On 25th September, 1997, a Show Cause Notice was issued to both the petitioners by respondent no.3 for initiating the departmental enquiry. Reply was filed by the petitioners to the said show cause notice. Both the petitioners were suspended and enquiry was initiated. Memorandum of charge was served on the petitioners and an Enquiry officer was appointed who submitted his report on 30th October, 2000. The petitioners filed their say to the enquiry report. On 11th June, 2001, the disciplinary authority was pleased to pass an order

of dismissal against the petitioners.

5. Being aggrieved by the aforesaid order, both the petitioners filed an appeal before the appellate authority. The appellate authority, however, decided to set aside the order passed by the disciplinary authority. However, lesser punishment was imposed by the appellate authority. The State of Maharashtra by letter dated 11th December, 2001 set aside the order which was passed by the appellate authority and restored the termination order dated 11th June, 2001 purportedly cancelled under the provisions of Section 164 of the MHADA Act. Against the said order, the petitioner preferred a writ petition in this Court which as allowed by this Court on 3rd September, 2002 and the matter was remanded back to respondent no.5.

6. Respondent no.5 gave hearing to the petitioners on 31st October, 2001 and by order dated 19th March, 2003, the appeal was rejected.

7. Being aggrieved by the said impugned order, the

petitioners preferred a petition under Article 226 of the Constitution of India.

8. Learned Counsel appearing on behalf of the petitioners invited our attention to the provisions of Section 164 and submitted that the Government while exercising its jurisdiction under Section 164 was not empowered to set aside the order which is passed by the appellate authority. In support of the said submission, he relied on the judgment of the Supreme Court in the case of **Nagaraj Shivarao Karjagi V/s. Syndicate Bank, Head Office, Manipal and Another** reported in **(1991) 3 SCC 219** and he also relied on the judgment of the Supreme Court in the **Chandrika Jha V/s. State of Bihar and others** reported in **(1984) 2 SCC 41.**

9. Learned Counsel for the respondents vehemently opposed the submissions made by the learned Counsel for the petitioners. He submitted that the Government was authorised to give directions to the appellate authority in public interest for the purpose of ensuring that finances and conduct of the business and affairs of the

authority or any Board was carried out in proper manner. He submitted that in the instant case, the Government had set aside the order of appellate authority in order to set up an example and the exemplary punishment was given in public interest.

10. We are unable to accept the submissions made by the learned Counsel on behalf of the respondents. For the purpose of deciding the issue involved in these petitions, it would be necessary to examine the provisions of Section 164 of the MHADA Act. Section 164 reads as under :-

> "(1). The State Government may from time to time issue such directions or instructions as it may think fit in regard to finances and conduct of business and affairs of the Authority or any Board and the Authority and such Board shall be bound to follow and act upon these directions or instructions.
>
> (2)(a). Without prejudice to the generality of

the foregoing provision, if the State Government is of opinion that the execution of any resolution or order of the Authority or of any Board is in contravention of, or in excess of, the powers conferred by or under this Act or any other law for the time being in force, or is likely to lead to abuse or misuse of or to cause waste of the Fund of the Authority, the State Government may, in the public interest, by order in writing, suspend the execution of such resolution or order. A copy of such order shall be sent forthwith by the State Government to the Authority and its Chief Executive Officer and the Board concerned and its Chief Officer.

(b). On receipt of the order sent as aforesaid, the Authority, or the Board, as the case may be, shall be bound to follow and act upon such order."

11. It is well accepted principle of interpretation of statue that a provision in any Act has to be given

the plain meaning and it has to be harmoniously construed. A perusal of the aforesaid section clearly discloses that power is vested in the State Government to issue directions or instructions to the authority or any Board in respect of the finances and conduct of business and affairs of the authority or any Board. Sub-clause 2 of the said provision empowers the State Government to set aside any resolution which has been passed which according to the Government is in contravention of or in excess of the powers conferred by or under this act or any other law for the time being in force or is likely to lead to abuse or misuse of or to cause waste of the Fund of the authority. Then in such cases, the State may in public interest by order in writing set aside such resolution or order. The aforesaid provisions, therefore, do not empower the Government to set aside the resolution which was passed by the authority which is constituted under the provisions of the Act and Rules made thereunder. It is not possible to read into the said provisions of Section 164 or to construe the language used for the said provision, in such a manner, as to give extended meaning

to the words used in the said section. The submission, therefore, of the learned Counsel appearing on behalf of the respondents that the words "in regard to finances and conduct of business and affairs of the authority or any Board also includes the power to issue directions or set aside resolution which is taken by an appropriate authority in regard to the conditions of service or disciplinary action taken by the disciplinary authority or the appellate authority" cannot be accepted. The appellate authority had set aside the order of dismissal which was ordered by the disciplinary authority and had directed that two increments of the petitioners should be stopped. The appellate authority has been set up under the provisions of the Act and Rules and it is a statutory remedy which is available to the delinquent officers against whom the orders are passed by the disciplinary authority.

12. In our view, therefore, respondent nos.3 and 5 do not have jurisdiction to pass the impugned order setting aside the order passed by the appellate authority and restore the order of disciplinary

authority terminating the services of the petitioners. The impugned order, therefore, is clearly without jurisdiction as the provisions of Section 164 of the MHADA Act does not confer this power on respondent nos.3 and 5.

13. The Supreme Court in the case of **Nagaraj (supra)** on which reliance has been placed by the petitioners also has held that the Central Government's power under Section 8 of 1970 Act to issue directions regarding matters of policy did not include giving directions to the new bank regarding award of set punishments to delinquent officers on different misconduct. The petitioners in the said case had challenged his order on compulsory retirement as also directions issued by the Finance Ministry, Government of India. The petitioner was working as a Manager of Syndicate Bank at East Patel Nagar Branch at New Delhi. There was departmental enquiry against the petitioner. Commissioner of Vigilance Inquiry from the Central Vigilance Commission conducted the enquiry. Several charges were levelled against the petitioner in the said SLP. The enquiry was

held as per the procedure prescribed by Syndicate Bank Officer Employees' (Disciplinary and Appeal Regulations), 1976. The investigating officer held that the action of the petitioner in the said case was in clear violation under the Rules of the bank. The bank referred the matter to the Central Vigilance commission and recommendation was made by the Central Vigilance Commission that the petitioner should be compulsorily retired from service by way of punishment. The disciplinary authority after considering the enquiry report imposed penalty of compulsory retirement. The appellate authority confirmed the order passed by the disciplinary authority. In the light of the facts stated above, the Apex court while examining the power of the Ministry of Finance, Government of India, observed that Section 8 was the only provision which empower the Government to issue direction and after quoting provisions of Section 8, the Apex Court observed in para 19 as under :-

> "The corresponding new bank referred to in Section 8 has been defined under Section 2(f) of

the Act to mean a banking company specified in column 1 of the First Schedule of the Act and includes the Syndicate Bank. Section 8 empowers the government to issue directions in regard to matters of policy but there cannot be any uniform policy with regard to different disciplinary matters and much less there could be any policy in awarding punishment to the delinquent officers in different cases. The punishment to be imposed whether minor or major depends upon the nature of every case and the gravity of the misconduct proved. The authorities have to exercise their judicial discretion having regard to the facts and circumstances of each case. They cannot act under the dictation of the Central Vigilance Commission or of the Central Government. No third party like the Central Vigilance Commission or the Central Government could dictate the disciplinary authority or the appellate authority as to how they should exercise their power and what punishment they

should impose on the delinquent officer. (See :De Smith's Judicial Review of Administrative Action, 4th edn., p.309). The impugned directive of the Ministry of Finance, is therefore, wholly without jurisdiction, and plainly contrary to the statutory Regulations governing disciplinary matters."

14. In our view, the ratio of the said judgment squarely applies to the facts of the present case.

15. In the result, both the petitions will have to be allowed. It is noted here that the learned counsel for the petitioners did not challenge the imposition of the sentence of stopping two increments which were awarded by the appellate authority. In the result, the impugned order in both the petitions will have to be set aside.

16. The impugned order passed by the Government dated 17th March, 2003 setting aside the order passed by the appellate authority and confirming the order passed

by the disciplinary authority terminating the services of the petitioner, is set aside and quashed. The order passed by the appellate authority dated 11th October, 2001 is confirmed.

17. Both the writ petitions are allowed in the above terms. Rule is made absolute in the above terms. In the circumstances, there shall be no order as to costs.

(V.G. PALSHIKAR, Acg.C.J.)

(V.M. KANADE, J.)